



Billing Code 9111-47-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Federal Emergency Management Agency**

#### **44 CFR Parts 59 and 64**

**[Docket ID FEMA-2019-0016]**

**RIN 1660-AA92**

### **Revisions to Publication Requirements for Community Eligibility Status**

#### **Information under the National Flood Insurance Program**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Federal Emergency Management Agency (FEMA) proposes to make two changes to its regulations regarding publication requirements of community eligibility status information under the National Flood Insurance Program (NFIP). First, FEMA proposes to replace outdated regulations that require publication of community loss of eligibility notices in the *Federal Register* with a requirement that FEMA publish this information on the internet or by another comparable method. Second, FEMA proposes to replace its requirement that FEMA maintain a list of communities eligible for flood insurance in the Code of Federal Regulations with a requirement that FEMA publish this list on the internet or by another comparable method.

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by Docket ID FEMA-2019-0016, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C Street, SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Adrienne Sheldon, Supervisory Emergency Management Specialist, Floodplain Management Division, Federal Insurance & Mitigation Administration, Federal Emergency Management Agency, 400 C Street, SW., Washington, DC 20472, 202-212-3966, or (email)

*AdrienneL.Sheldon@fema.dhs.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

We encourage you to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, identify the agency name and the docket ID for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address under the ADDRESSES section. Please submit your comments and material by only one means.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal e-Rulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide.

Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of [www.regulations.gov](http://www.regulations.gov).

*Viewing comments and documents:* For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at <http://www.regulations.gov>. Background documents and submitted comments may also be inspected at FEMA, Office of Chief Counsel, 500 C Street, SW., Washington, DC 20472-3100.

*Public Meeting:* We do not plan to hold a public meeting, but you may submit a request for one at the address under the ADDRESSES section explaining why one would be beneficial. If FEMA determines that a public meeting would aid this rulemaking, it will hold one at a time and place announced by a notice in the *Federal Register*.

## **II. Background**

The National Flood Insurance Act of 1968, as amended (NFIA), Title 42 of the United States Code (U.S.C.) 4001 *et seq.*, authorizes the Administrator of FEMA to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of property arising from floods in the United States.<sup>1</sup> Under the NFIA, FEMA may only grant flood insurance to properties within communities that have adopted adequate land use and control measures.<sup>2</sup> The statute authorizes FEMA to develop land use criteria consistent with requirements laid out in the NFIA and to encourage the adoption and

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<sup>1</sup> See 42 U.S.C. 4011(a).

<sup>2</sup> See 42 U.S.C. 4022(a)(1).

enforcement of State and local measures implementing these criteria.<sup>3</sup> FEMA regulations governing community eligibility for participation in the NFIP are located at 44 CFR parts 59, 60, and 64.

NFIP regulations at 44 CFR 60.3, 60.4, and 60.5 contain community eligibility requirements for flood insurance. If a community fails to demonstrate to FEMA that it meets these requirements, or decides to withdraw from the NFIP, FEMA may initiate probation, suspension, or withdrawal procedures as described in 44 CFR 59.24. In the case of an unintentional loss of eligibility, for instance if a community is suspended for failing to enforce its floodplain regulations, FEMA notifies the community of the upcoming loss directly and gives the community an opportunity to correct the deficiency that triggered the procedures. In cases of both intentional and unintentional loss of eligibility, FEMA publishes a notice of the upcoming loss of eligibility in the *Federal Register* as required by 44 CFR 59.24.

NFIP regulations at 44 CFR 64.6 state that flood insurance under the NFIP is authorized for the communities set forth under Section 64.6 of the regulations. Due to the large number of communities eligible for flood insurance and the relative frequency to changes to community eligibility, maintaining a list of communities in FEMA's regulations is not feasible; however, FEMA meets this requirement by publishing the updated list of communities through periodic final rules in the *Federal Register*. As explained in more detail below, FEMA last published an updated list in the *Federal Register* in August 2006.

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<sup>3</sup> See 42 U.S.C. 4102(c).

### **III. Proposed Rule: Section 59.24 Community Loss of Eligibility Notices and Section 64.6 List of Communities Eligible for Flood Insurance**

FEMA proposes to make two changes to these regulations to reduce costs and streamline notice procedures. First, FEMA proposes to remove the requirement contained in 44 CFR 59.24(a), (c), (d), and (e) that community loss of eligibility notices be published in the *Federal Register*, and add a requirement that FEMA publish the notices on the internet or by another comparable method. Second, FEMA proposes to revise 44 CFR 64.6 to remove the requirement that FEMA maintain a list of communities eligible for flood insurance under the NFIA in the CFR. Instead, the proposed revision would require publication and maintenance of the list on the internet or through another comparable method. These proposed changes would not impact the other notification requirements found in 44 CFR 59.24. For example, in cases of involuntary loss of eligibility, FEMA provides a minimum of three written notices to a community's chief executive officer or other designee over a several month period prior to the anticipated loss of eligibility, and provides the community with an opportunity to correct the defect. No substantive right of communities or stakeholders would be impacted by this change.

The proposed changes are consistent with the NFIA. The NFIA directs FEMA to certify communities for receipt of flood insurance under the NFIP<sup>4</sup> and lays out standards for land management,<sup>5</sup> but leaves community certification and decertification procedures, as well as notification procedures, to FEMA's discretion. Consequently, these proposed changes do not conflict with the NFIA.

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<sup>4</sup> See 42 U.S.C. 4022(a)(1).

<sup>5</sup> See 42 U.S.C. 4102(c).

Sections § 59.24 and § 64.6 are outdated, and were promulgated prior to the widespread use of the internet. FEMA initially adopted the *Federal Register* publication requirement contained in § 59.24 in 1971.<sup>6</sup> Similarly, in 1971 FEMA substantially adopted the requirement in § 64.6 to maintain and publish the list of eligible communities,<sup>7</sup> with the current language adopted in 1976.<sup>8</sup>

#### **Section 59.24:**

Publishing the community loss of eligibility notices electronically, in conjunction with the Community Status Book, would increase the public visibility and accessibility of these notices, as it is easier for the public to access the eligibility notices in a single electronic format than it is for the public to find a *Federal Register* notice specific to a particular community. In addition, publishing community loss of eligibility notices in the *Federal Register* requires FEMA to expend additional financial resources compared to publication in an electronic format. Removing this requirement will provide cost savings to the agency.

If these proposed regulatory changes are adopted, FEMA plans to store the notices on its website, so that they are easily available to all interested parties. Although FEMA has not yet created a digital repository to store these notices, FEMA anticipates making a link to these notices that is easily accessible from the Community Status Book. FEMA's objective in the digital accessibility of these notices is to make the notices easy

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<sup>6</sup> See 36 FR 18,175 and 18,179, discussing community loss of eligibility procedures, then located at 24 CFR 1909.24. At 18,175, the rulemaking notes that: "A new § 1909.24 has been added to clarify the manner in which suspensions of flood insurance eligibility will be handled..." No further explanation is provided, and loss of eligibility is not addressed in the associated notice of proposed rulemaking, located at 36 FR 11,109.

<sup>7</sup> See 36 FR 24,768, § 1914.4.

<sup>8</sup> See 41 FR 46,987, § 1914.6.

for users to find, and FEMA welcomes suggestions from the public on the best place on its website to house this database of community eligibility notices.

FEMA proposes to store notices on its public facing website for a minimum of 1 year after the notices are issued. FEMA welcomes input from the public on whether a year is sufficient, or if a longer time-period would be beneficial. After removal from FEMA's public-facing website, FEMA will retain copies of the notices in accordance with all statutory and regulatory requirements.

#### **Section 64.6:**

Section 64.6 directs FEMA to maintain a list of communities eligible for flood insurance under the NFIA in the CFR. FEMA maintains an online Community Status Book containing this information. The Community Status Book provides a list of which communities are, and are not, eligible for flood insurance under the NFIP. The Community Status Book is available for public viewing on the FEMA website at <https://www.fema.gov/national-flood-insurance-program-community-status-book>. The Community Status Book is organized alphabetically by state and community, so a stakeholder can easily identify the eligibility status of his or her community. Because the information directed by § 64.6 is already being published in the Community Status Book, the separate list directed by § 64.6 is duplicative and thus no longer needed.

FEMA has not updated the eligible community list, as directed by § 64.6, since August 28, 2006<sup>9</sup> because of the list's overlap with the Community Status Book and the cost of publishing the updated lists in the *Federal Register*. Instead, in an effort to comply with § 64.6, FEMA generates quarterly reports identifying changes to the list of

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<sup>9</sup> The last update to § 64.6 in the *Federal Register* was published on August 28, 2006. See 71 FR 50,856. Updates were made regularly until that point in time, with several updates being published each year.

eligible communities. These quarterly reports are available upon stakeholder request, but are not otherwise published. FEMA generates these reports each quarter in order to partially comply with *Federal Register* publication requirements. Generating these reports requires FEMA to take the information contained in each notice and re-format and consolidate the content into one list. Moving the list updates fully online would eliminate the time and effort associated with generating these reports, yielding cost savings for FEMA. . FEMA proposes to revise § 64.6 to require that the agency publish and maintain community eligibility information on the internet or through another comparable method, as is currently being done through the Community Status Book, because full compliance with § 64.6 would be burdensome to the agency and would not provide additional community eligibility status information beyond what is currently maintained in the Community Status Book.

**Transition:**

To aid in the transition to the new form of publication, FEMA would publish brief notices once a month in the *Federal Register* for 6 months after the effective date of the final rule, alerting stakeholders to the change, and letting them know where to go to access community status information.

**IV. Regulatory Analysis**

A. *Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improving Regulation and Regulatory Review, and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs*

Executive Orders 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and Review”) direct agencies to assess the costs and



benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by OMB.

#### 1. Need for Regulatory Action

Under the NFIA, FEMA may only grant flood insurance to properties within communities that have adopted adequate land use and control measures.<sup>10</sup> Pursuant to this statutory direction, FEMA has adopted regulations governing community eligibility for participation in the NFIP at 44 CFR parts 59, 60, and 64. These regulations include requirements that a community follow certain steps to retain eligibility for the NFIP. If a community fails to follow these requirements or decides to withdraw from the NFIP, FEMA initiates loss of eligibility procedures as described in 44 CFR 59.24 and publishes a notice of the upcoming loss of eligibility in the *Federal Register*. In addition, 44 CFR

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<sup>10</sup> See 42 U.S.C. 4022(a)(1).

64.6 states that flood insurance under the NFIP is authorized for communities set forth under Section 64.6 of the regulations, requiring FEMA to maintain a list of eligible communities in the CFR. FEMA proposes to make two changes to the current regulations.

First, FEMA proposes to remove the requirement pursuant to § 59.24(a), (c), (d), and (e) to publish community loss of eligibility notices in the *Federal Register*. In lieu of publication in the *Federal Register*, the proposed rule would require that these notices be published on the internet or by another comparable method. To aid in the transition, FEMA would publish brief notices once a month in the *Federal Register* for 6 months after the effective date of the final rule, alerting stakeholders to the change.

Second, FEMA proposes to remove the requirement pursuant to § 64.6 that FEMA maintain a list of eligible communities in the CFR. In lieu of this requirement, the proposed rule would require FEMA to publish and maintain a list of eligible communities on the internet or through another comparable method.

These two proposed changes would result in reduced FEMA expenditures. The proposed changes to § 59.24 would also provide faster and more user-friendly access to community loss of eligibility information by requiring publication of the notices online instead of in the *Federal Register*. In addition, these changes would direct FEMA to consolidate community status information into one location, allowing stakeholders to have more streamlined access to community status-related information.

## 2. Baseline

### Requirement to Publish Community Loss of Eligibility Notices in the *Federal Register*

Community loss of eligibility notices were published a total of 245 times in the *Federal Register* from 2007 to 2016. Based on data from these notices, FEMA calculates that on average, from 2007 to 2016, the notices were published about 25 times per year, rounded to the nearest whole number (245 divided by 10 = 24.5. 24.5 rounded to the nearest whole number = 25).

#### Requirement to Publish the List of Eligible Communities in the CFR

With respect to the requirement for FEMA to maintain a list of eligible communities in the CFR, FEMA notes that it currently maintains this list online in the Community Status Book rather than in the CFR.<sup>11</sup> In addition, FEMA prepares quarterly reports in an attempt to comply with the publication requirement contained in § 64.6. The quarterly preparation burden is approximately 15 hours per quarter at a cost of \$80 per hour, for a total of \$4,800 each year (15 x 80 x 4).<sup>12</sup> FEMA has not published the quarterly reports in the CFR since 2006 due to the recurring costs involved.

#### 3. Costs

#### Community Loss of Eligibility Notices: Internet Publication Costs

As a substitute for publishing the required community loss of eligibility notices in the *Federal Register*, the proposed rulemaking would require FEMA to publish community loss of eligibility notices online. FEMA currently maintains a public website ([www.fema.gov](http://www.fema.gov)) where similar notices, bulletins, and updates from across the agency are published for public consumption. While there is no direct cost to adding individual

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<sup>11</sup> The Community Status Book is available for public viewing at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

<sup>12</sup> Hourly rates derived from FEMA estimates based on prior contracting benchmarks for this service.

webpages or sections to the site, publishing community loss of eligibility notices online would create labor costs for staff who would need to develop a template to format and process the notices for web publication.

FEMA plans an upcoming website re-design that would include more versatile search functionality for the user, a more standardized look and feel, increased search engine optimization, and better capture of meta data. FEMA anticipates the use of this re-design in the analysis of this proposed rulemaking. Development of this publication process for online notices will be labor intensive at the beginning. Once a template is created, each update will be less labor intensive than the current practice.

FEMA staff expect it would take approximately 3 days of labor (24 hours) of a General Schedule (GS) Federal employee in the National Capital Region, at the GS-14 level (\$53.68 hourly wage),<sup>13</sup> to establish the publication process under the expected redesign. After the publication process is established, FEMA anticipates that it would take a GS-14 employee approximately thirty minutes per future publication.

The average 25 notices per year would result in a burden to FEMA of \$2,860.61 the first year ( $(\$53.68 \times 1.46)^{14} \times (24 + (0.5 \times 25))$ ) and \$979.66 each subsequent year ( $(\$53.68 \times 1.46) \times (0.5 \times 25)$ ) for a 10-year total of \$11,677.55 (1).

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<sup>13</sup> Office of Personnel Management, 2017, Washington-Baltimore-Arlington-DC-MD-VA-WV-PA, Hourly Rate, GS-14, Step 1. Available at [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/17Tables/html/DCB\\_h.aspx](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/17Tables/html/DCB_h.aspx).

<sup>14</sup> Bureau of Labor Statistics, *Employer Costs for Employee Compensation*, March, 2017, Table 1 Employer costs per hour worked for employee compensation and costs as a percent of total compensation: civilian workers, by major occupational and industry group. Available at [https://www.bls.gov/news.release/archives/ecec\\_06092017.pdf](https://www.bls.gov/news.release/archives/ecec_06092017.pdf). The per hour benefits multiplier is calculated by dividing total compensation for all workers (\$35.28) by wages and salaries for all workers (\$24.10), which yields a per hour benefits multiplier of 1.46. ( $\$35.28 \div \$24.10 = 1.4639$ ). Fully-loaded wage rates are calculated by multiplying the per hour benefits multiplier by the applicable wage rate (1.46 per hour benefits multiplier x \$53.68 hourly wage rate = \$78.37 fully-loaded hourly wage).

**Table 1: Internet Publication Costs**

Year	Initial Internet Publication Burden (Hours) (a)	Recurrent Internet Publication Burden (Hours) (b) (=0.25 x25)	Internet Publication Cost (c) = (axb) x(\$59.91 x 1.46)
1	24	12.5	\$2,861
2		12.5	\$980
3		12.5	\$980
4		12.5	\$980
5		12.5	\$980
6		12.5	\$980
7		12.5	\$980
8		12.5	\$980
9		12.5	\$980
10		12.5	\$980
Total	24	12.5	\$11,678

#### Community Loss of Eligibility Notices: Transition/ Phase-out Costs

Upon the issuance of the final rule, FEMA would aid in the transition from the publication of community loss of eligibility notices in the *Federal Register* to their posting on FEMA’s website by publication of transitional announcements in the *Federal Register*. These announcements would alert stakeholders of the new location of these notices and they would be concise and tailored to notify stakeholders of the FEMA web address where the community loss of eligibility notices can be found. FEMA expects these transitional announcements to publish once a month for a 6-month phase-out period following the effective date of the rule.

#### Community Status Report: Cost Savings

FEMA proposes to remove the requirement pursuant to § 64.6 that FEMA maintain an updated list of eligible communities in the CFR. FEMA does not currently publish updates to the list of communities eligible for flood insurance in the CFR and

already maintains an online Community Status Book containing this information.<sup>15</sup>

FEMA prepares quarterly reports on the current lists of communities in an attempt to comply with the regulation. These reports are available upon stakeholder request, although they are not published. Modifying the regulations to eliminate the requirement to publish the list in the CFR in favor of the list already maintained on FEMA's website (the Community Status Book) would eliminate preparation of these lists and save the quarterly preparation burden of approximately 15 hours per quarter at \$80 per hour,<sup>16</sup> yielding a cost savings of \$4,800 ( $\$80 \times 15 \times 4$ ) annually. This revision would save FEMA costs without affecting policyholders or other stakeholders.

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<sup>15</sup> The Community Status Book is available for public viewing at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

<sup>16</sup> Hourly rates derived from FEMA estimates based on prior contracting benchmarks for this service.

**Table 2: Net Cost Savings**

Year	Internet Publication Cost	Community Status Report Cost Savings	Net Cost Savings	NPV at 3%	NPV at 7%
1	\$2,861	-\$4,800	-\$1,939	-\$1,883	-\$1,813
2	\$980	-\$4,800	-\$3,820	-\$3,601	-\$3,337
3	\$980	-\$4,800	-\$3,820	-\$3,496	-\$3,119
4	\$980	-\$4,800	-\$3,820	-\$3,394	-\$2,915
5	\$980	-\$4,800	-\$3,820	-\$3,295	-\$2,724
6	\$980	-\$4,800	-\$3,820	-\$3,199	-\$2,546
7	\$980	-\$4,800	-\$3,820	-\$3,106	-\$2,379
8	\$980	-\$4,800	-\$3,820	-\$3,016	-\$2,223
9	\$980	-\$4,800	-\$3,820	-\$2,928	-\$2,078
10	\$980	-\$4,800	-\$3,820	-\$2,843	-\$1,942
Total	\$11,678	-\$48,000	-\$36,322	-\$30,762	-\$25,075
Annualized				-\$3,606	-\$3,570

The net cost savings expected from this rulemaking are presented in **2**. The up-front transition costs are only expected to take place in Year 1, thus the cost savings expected over the subsequent years are not impacted. For the 10-year period analyzed, the estimated quantified discounted total cost savings at 7 and 3 percent are \$25,075 (annualized at \$3,570) and \$30,762 (annualized at \$3,606), respectively.

#### 4. Benefits

Revising 59.24 to eliminate the *Federal Register* publication requirements would allow FEMA to be more agile and timely in updating community status information. In contrast, continued updates through the *Federal Register* would be slower, more expensive to FEMA, and present the information in a format that is less accessible to stakeholders.

In addition, making this change to 59.24, and updating FEMA's regulations in 64.6, would locate all information related to community status and eligibility for flood insurance in one place that is well known by stakeholders. This consolidation would

improve the ease and efficiency of locating community status and eligibility information for stakeholders and for FEMA.

## 5. Transfers

Transfer payments are monetary payments from one group to another that do not affect total resources available to society. There are no anticipated transfer payments resulting from the proposed rulemaking.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FEMA does not believe this proposed rule would have a significant economic impact on a substantial number of small entities. Nonetheless, FEMA is publishing this IRFA to aid the public in commenting on the potential small entity impacts of the proposed requirements in this NPRM. FEMA invites all interested parties to submit data and information regarding the potential direct costs on small entities that would result from the adoption of this NPRM. FEMA will consider all comments received in the public comment process.

The Regulatory Flexibility Act requires an IRFA to contain certain analyses. First, an IRFA describes the reasons why the action by the agency is being considered. Second, it must succinctly state the objectives of, and legal basis for, the proposed rule. Third, it must describe—and, where feasible, estimate the number—of small entities to



which the proposed rule would apply. Fourth, it must describe the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills necessary for preparation of the report or record. Fifth, it must identify, to the extent practicable, all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. Lastly, it must describe significant alternatives to the rule.

1. A Description of the Reasons Why Action by the Agency is being Considered

FEMA proposes to remove the *Federal Register* publication requirement from § 59.24, and instead require that these notices be published on the internet or by another comparable method. In addition, FEMA proposes to modify § 64.6 to require FEMA to publish and maintain a list of eligible communities online or through another comparable method. These changes would result in reduced FEMA expenditures and provide faster and more user-friendly publications.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The National Flood Insurance Act of 1968, as amended (NFIA), Title 42 of the United States Code (U.S.C.) 4001 et seq., authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of property arising from floods in the United States.<sup>17</sup> Under the NFIA, FEMA may only grant flood insurance to properties within

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<sup>17</sup> See 42 U.S.C. 4011(a).

communities that have adopted adequate land use and control measures.<sup>18</sup> The statute gives the FEMA Administrator authority to develop land use criteria consistent with requirements laid out in NFIA and to encourage the adoption and enforcement of State and local measures implementing these criteria.<sup>19</sup> Pursuant to this statutory direction, FEMA has adopted regulations governing community eligibility for participation in the NFIP at 44 CFR parts 59 and 60, and 64.

FEMA proposes to make two changes to regulations to cut costs for FEMA and streamline notice procedures. First, FEMA proposes to remove the requirement from § 59.24 that notices regarding loss of eligibility be published in the *Federal Register*, and instead proposes requiring that these notices be published on the internet or through another comparable method. Second, FEMA proposes to revise § 64.6, which directs FEMA to maintain a list of eligible communities in the CFR and proposes that FEMA instead publish and maintain a list of eligible communities online or through another comparable method. This proposed rule would not impact other forms of notice to communities, nor would it impact the substantive rights of communities or stakeholders.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to which the Proposed Rule Will Apply

“Small entity” is defined in 5 U.S.C. § 601. The term “small entity” can have the same meaning as the terms “small business,” “small organization” and “small governmental jurisdiction.” Section 601(3) defines a “small business” as having the same meaning as “small business concern” under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated and

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<sup>18</sup> See 42 U.S.C. 4022(a)(1).

<sup>19</sup> See 42 U.S.C. 4102(c).

is not dominant in its field of operation. Section 601(4) defines a “small organization” as any not-for-profit enterprises that are independently owned and operated and are not dominant in their field of operation. Section 601(5) defines “small governmental jurisdictions” as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

This rule does not directly regulate any small entities. As previously described, this rule only changes how FEMA shares loss of community eligibility notices and community status information. FEMA used the US Census Bureau’s 2012 Census of Government<sup>20</sup> to estimate the number of small governmental jurisdictions in the United States. According to the U.S. Census, there are 38,910 jurisdictions consisting of counties, municipalities and townships within the United States. Among these, 37,132 would qualify as small governmental jurisdictions, which would equate to a 95.4 percent of all U.S. governmental jurisdictions. Applying this percentage to the 22,269 communities currently participating in the National Flood Insurance Program (NFIP)<sup>21</sup> results in an estimated 21,245 small governmental jurisdictions.<sup>22</sup> Individual policyholders are not considered small entities.

FEMA seeks comments on the methodology and assumptions used to determine the number of small entities impacted by this proposed rule.

#### 4. A Description of the Projected Reporting, Recordkeeping, and other Compliance Requirements of the Proposed Rule, including an Estimate of the Classes of Small

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<sup>20</sup> See U.S. Census Bureau, “2012 Census of Governments, Local Governments by Type and State 2012,” Table 2, September 26, 2013, available at <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

<sup>21</sup> The number of NFIP communities is derived from “The National Flood Insurance Program Community Status Book,” Page 478, located at <https://www.fema.gov/national-flood-insurance-program-community-status-book>.

<sup>22</sup> The number of small government jurisdictions equals 22,269 multiplied by 0.954.

Entities which will be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

Currently, FEMA anticipates this rule would not impose any direct costs on small entities and anticipates that the proposed rule would allow easier access to information about flood insurance eligibility. This proposed rulemaking does not consist of any substantive policy changes. FEMA does not anticipate an increase in administrative burdens to small entities from this proposed rule.

5. An Identification, to the Extent Practicable, of all Relevant Federal Rules which may Duplicate, Overlap, or Conflict with the Proposed Rule

There are no relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

6. A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

Given that this rule is largely procedural in nature, with no direct costs on small entities, no less burdensome alternatives to the proposed rule are available. In the absence of this proposed rule, small entities would continue to receive the loss of community eligibility notices through *Federal Register* publications. Community status information would continue to be maintained on FEMA's website.

FEMA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FEMA will consider all comments received in the public comment process.

After reviewing the public comments, FEMA may certify the final rule as not having a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501-1504, 1531-1536, 1571, pertains to any rulemaking which is likely to result in the promulgation of any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rulemaking would not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100 million (adjusted annually for inflation) or more in any one year as a result of a Federal mandate, and it would not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*C. Paperwork Reduction Act of 1995*

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), FEMA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the

collection of information displays a valid control number. FEMA collects community information for the purposes of application to the NFIP under OMB Control Number 1660-0004, Application for Participation in the National Flood Insurance Program (NFIP).<sup>23</sup> However, FEMA has determined that this rulemaking does not impact this information collection or any other collection of information as defined by the Act.

*D. Privacy Act/E-Government Act*

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A “record” is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. *See* 5 U.S.C. 552a(a)(4). A “system of records” is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any

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<sup>23</sup> See 44 CFR 59.22 for a description of the information collected.

information in an identifiable form permitting the physical or online contacting of a specific individual.

In accordance with Department of Homeland Security privacy compliance policy, FEMA has completed a Privacy Threshold Analysis for this proposed rule. DHS determined that this proposed rule is not privacy sensitive, as it does not affect the information collected about an individual. FEMA's original collection and maintenance of NFIP related personally identifiable information has coverage under the DHS/FEMA-003 – National Flood Insurance Program Files, 79 FR 28747 (May 19, 2014) System of Records Notice and the DHS/FEMA/PIA – 011 National Flood Insurance Program Information Technology System Privacy Impact Assessment. This proposed rule does not impact this existing system of record, create a new system of record, nor impact the current Privacy Impact Assessment. Therefore, this proposed rule does not require coverage under an existing or new Privacy Impact Assessment or System of Records Notice.

*E. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments*

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes

substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

Although Tribes that meet the NFIP eligibility criteria can participate in the NFIP in the same manner as communities,<sup>24</sup> FEMA has reviewed this proposed rule under Executive Order 13175 and has determined that this proposed rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This proposed rule modernizes notice requirements for community loss of eligibility information and community status information; therefore, FEMA does not expect the regulatory changes in this proposed rule to substantially or disproportionately affect Indian Tribal governments acting as communities under the NFIP.

*F. Executive Order 13132, Federalism*

Executive Order 13132, “Federalism,” 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent

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<sup>24</sup> Although the NFIP does not explicitly reference Tribal Governments, FEMA includes Tribal nations in its definition of a community. See 44 CFR 59.1.



practicable, must consult with State and local officials before implementing any such action.

FEMA has determined that this rulemaking does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order. This rulemaking seeks to modernize notice requirements for community loss of eligibility information and community status information under the NFIP; therefore, the rule does not impact the substantive rights, roles, or responsibilities of States, and does not limit State policymaking discretion.

*G. National Environmental Policy Act of 1969 (NEPA)*

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 et seq., an agency must prepare an environmental assessment or environmental impact statement for any rulemaking that significantly affects the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement.

Rulemaking is a major Federal action subject to NEPA. Categorical exclusion A3 included in the list of exclusion categories at Department of Homeland Security Instruction Manual 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and advisory

circulars if they meet certain criteria provided in A3(a-f). This notice of proposed rulemaking meets Categorical Exclusion A3(d), “Those that interpret or amend an existing regulation without changing its environmental effect”.

#### *H. Congressional Review of Agency Rulemaking*

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801-808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency’s actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders.

FEMA will send this rule to the Congress and to GAO pursuant to the CRA if the rule is finalized. The rule is not a “major rule” within the meaning of the CRA. It will not have an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

## **List of Subjects**

### **44 CFR Part 59**

Flood insurance, Reporting and recordkeeping requirements.

### **44 CFR Part 64**

Flood insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Emergency Management Agency proposes to amend 44 CFR parts 59 and 64 as follows:

## **PART 59—GENERAL PROVISIONS**

1. The authority citation for part 59 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Amend § 59.24 by:

- a. Revising the fourth sentence of paragraph (a);
- b. Revising the fourth sentence of paragraph (c);
- c. Revising the second sentence of paragraph (d);
- d. Revising the second sentence of paragraph (e).

The revisions read as follows:

### **§ 59.24 Suspension of Community Eligibility.**

- (a) \* \* \* If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, no later than 30 days before the expiration of the original six month period the Federal Insurance Administrator shall provide written notice to the community and to the state and assure publication of the community's loss of eligibility for

the sale of flood insurance on the internet or by another comparable method, such suspension to become effective upon the expiration of the six month period. \* \* \*

\* \* \* \* \*

(c) \* \* \* If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication of its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. \* \* \*

(d) \* \* \* If a community is to be suspended, the Federal Insurance Administrator shall inform it upon 30 days prior written notice and upon publication of its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. \* \* \*

(e) \* \* \* Upon receipt of a certified copy of a final legislative action, the Federal Insurance Administrator shall withdraw the community from the Program and publish its loss of eligibility for the sale of flood insurance on the internet or by another comparable method. \* \* \*

\* \* \* \* \*

## **PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE**

3. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

4. Revise § 64.6 to read as follows:

**§ 64.6 List of eligible communities.**

FEMA will maintain a list of communities eligible for the sale of flood insurance pursuant to the National Flood Insurance Program (42 U.S.C. 4001-4128). This list will be published and maintained on the internet or through another comparable method.

**Pete Gaynor,**

*Administrator,*

*Federal Emergency Management Agency.*

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